FLORENCE WENTWORTH

IBLA 82-890 Decided April 27, 1983

Appeal from decision of the New Mexico State Office, Bureau of Land Management, rejecting oil and gas lease offer NMA 38125 OK.

Affirmed.

1. Mineral Leasing Act for Acquired Lands: Consent of Agency--Oil and Gas Leases: Acquired Lands Leases--Oil and Gas Leases: Consent of Agency

> The Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (1976), requires that the consent of the administrative agency having jurisdiction over acquired land described in an oil and gas lease offer be obtained prior to the issuance of a lease for such land. Absent such consent, the Department of the Interior is without the authority to issue a lease.

APPEARANCES: Bruce W. Gambill, Esq., Pawhuska, Oklahoma, for appellant; John H. Harrington, Esq., Office of the Field Solicitor, Department of the Interior, Sante Fe, New Mexico, for Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Florence Wentworth has appealed the May 13, 1982, decision of the New Mexico State Office, Bureau of Land Management (BLM), which rejected her noncompetitive acquired lands lease offer NMA 38125 OK as follows:

The Corps of Engineers in Tulsa, Oklahoma, report that the mineral rights at Oologah Lake were obtained in order to halt oil production which was causing pollution to the lake. The Corps states that to allow leasing of these minerals would defeat the purpose of the acquisition. When funding becomes available, research will be conducted to study the feasibility of production in the Oologah area. (43 CFR 3109.3-1)

In the statement of reasons appellant asserts: (1) That prior to condemnation she was a joint tenant in the lease and is the survivor; (2) that the lease offer had, in fact, been accepted by the BLM as of February 17, 1981, and that there remained only the ministerial duty of lease finalization; (3) that the waters of the lake are separate from the lands embraced by the offer; and (4) that the action of the BLM rejecting the lease application is arbitrary and capricious.

The offer to lease was originally filed by Herbert E. Wentworth on July 30, 1979. Herbert E. Wentworth died while the offer was pending and appellant demonstrated to the satisfaction of BLM that she was his sole heir. Her name was then substituted for his on the lease offer. In a letter to appellant dated February 17, 1981, BLM stated in part: "A decision showing Florence E. Wentworth as the lessee of record for NM-A 38125 Okla. will be issued when the lease is finalized." By letter dated October 5, 1981, and March 8, 1982, the Corps of Engineers (COE) informed the BLM that it would not consent to leasing the lands sought in the offer. The last paragraph of each of these letters is identical. It reads: "As stated in our 22 June 1981 letter to your office, the Government purchased minerals at Oologah Lake to halt oil production which was causing pollution. Therefore, no minerals will be leased in Oolagah Lake until further notice." The purchase referred to in the June 22, 1981, letter on behalf of the COE was through condemnation proceedings initiated on behalf of the COE in May 1970. The appellant's late husband was a party defendent in that suit.

[1] Section 3 of the Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. § 352 (1976), provides, in pertinent part:

> No mineral deposit covered by this section shall be leased except with the consent of the head of the executive department, independent establishment, or instrumentality having jurisdiction over the lands containing such deposit * * * and subject to such conditions as that official may prescribe to insure adequate utilization of the lands for the primary purposes for which they have been acquired or are being administered.

See 43 CFR 3109.3-1. The above-cited statute precludes mineral leasing of acquired lands by the Secretary of the Interior without the consent of the administrative agency having jurisdiction over the lands. Amoco Production Co., 69 IBLA 279, (1982); Altex Oiul Corp., 66 IBLA 307 (1982), and cases cited therein; Leeco, Inc., 23 IBLA 194 (1976) (TVA). This is distinguished from mineral leasing under the Mineral Leasing Act, supra, where the Secretary of the Interior is vested with the sole authority for deciding whether to issue a lease for public lands. 1/ See, e.g., Natural Gas Corp. of California,

---

1/ In certain instances, a service or bureau within the Department may have jurisdiction over acquired lands, in which case the Secretary of the Interior would have the sole authority for deciding whether to issue a lease for such lands. See Mardam Exploration, Inc., 52 IBLA 296 (1981). However, this is not the situation in the instant case.

IBLA 348 (1981). Due to the death of the original offeror, appellant's name was substituted in place of his. The BLM letter of February 17, 1981, simply apprised her of the fact that evidence submitted by her was satisfactory, and that when (if) issued it would be issued in her name. A lease does not issue until the offer is signed by the authorized officer. 43 CFR 3111.1-1(c). The lease offer herein was never signed. All prerequisite conditions must be met prior to issuance, including approval by the COE, which approval was not gained. Appellant gained no more rights through the substitution than were held by the original offeror.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

R. W. Mullen
Administrative Judge

We concur:

James L. Burski
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge.